

FILED  
4:55 P.M.  
O'Clock

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

FEB 28 2012

SANDRA K. MANNHAM, Clerk  
By: *[Signature]*

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Robin Gearhart, Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: February 28, 2012

TITLE:

COUNSEL:

STATE OF ARIZONA

Sheila Sullivan Polk  
Yavapai County Attorney  
Bill Hughes, Esq.  
Deputy Yavapai County Attorneys

(Plaintiff)

(For Plaintiff)

VS.

JAMES ARTHUR RAY

Thomas K. Kelly, Esq. (e)  
425 E. Gurley  
Prescott, AZ 86301

Luis Li, Esq.  
Brad Brian, Esq.  
Truc Do, Attorney at Law  
Miriam Seifter, Attorney at Law  
MUNGER TOLLES & OLSON LLP (e)  
355 S. Grand Avenue, 35<sup>th</sup> Fl.  
Los Angeles, CA 90071

(Defendant)

(For Defendant)

**UNDER ADVISEMENT RULING ON DEFENDANT'S REVISED STATEMENT OF COSTS, ORDER  
IMPOSING SANCTIONS AND ORDER STAYING IMPOSED SANCTIONS**

The Court has considered the Defendant's Revised Statement of Costs, the State's Response and the arguments of the parties.

The authority for imposing monetary sanctions is found in Rule 15.7(a) of the Arizona Rules of Criminal Procedure. This rule states that the list of available sanctions is not exclusive, and Rule 15.7(a)(6) sets forth a "catch-all" provision that logically includes a monetary award in appropriate circumstances. The Court has concluded that a restitutionary monetary sanction under the circumstances presented here is warranted.

This Court has also concluded that the basic legal issue was not complicated and that the matter should have been presented to the Court before engaging in excessive formal litigation. The State clearly had an obligation to disclose all

information that had been provided to the medical examiners, including the "power point" at issue. The Defendant had a corresponding right to interview the medical examiners as to the nature, source, and any effect on their opinions of all information they had received. Thus, the defense should not have been unduly hindered in its questioning of these independent expert witnesses about the context in which they received the information that was used to formulate their opinions, so inquiry directed to the December 2009 meeting among prosecutors, law enforcement agents and the examiners should have been unfettered. Because the State improperly restricted the disclosure/discovery process in the manner just described and because the State should have known that this restriction was improper, the Defendant is entitled to an imposition of a restitutionary monetary sanction. However, the Defendant's request for more than \$27,000 for costs and attorney fees related to the motion to compel and to supplemental interviews is not reasonable.


Although the State did not present contrary evidence, the Court questions the reasonableness of the rate of \$350 per hour for the level of research and drafting required to present the motion to compel. The Court also questions the extensive amount of time devoted to presenting what this Court has concluded to be a clear-cut issue and to re-interviewing the pertinent witnesses in a fairly limited area of inquiry. Finally, the Court questions the reasonableness, at least in the context of presenting a request for a restitutionary monetary sanction, of having multiple attorneys duplicate work or appearances.

To the extent that the Court is able to consider the relevant circumstances, the Court concludes that imposition of a restitutionary monetary sanction in the amount of \$4,000 is appropriate. Therefore, pursuant to Rule 15.7(a),

**IT IS ORDERED** imposing a restitutionary monetary sanction against the State in the amount of \$4,000.

**IT IS FURTHER ORDERED** staying the imposed restitutionary monetary sanction against the State in the amount of \$4,000 pending the outcome of the State's Cross Appeal of this matter.

Dated: This 28<sup>th</sup> day of February, 2012.

  
Honorable Warren R. Darrow  
Judge of the Superior Court

cc: Victim Services Division